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STATEMENT OF JURISDICTION

Respondent accepts Appellant's jurisdictional statement.

STATEMENT OF FACTS

Appellant's Statement of Facts does not fairly or concisely state the facts. Hence, Respondent submits her own statement of facts.

Statement of the Case. On October 26, 2000 a purported **AJudgment** and Order@ [emphasis added] was entered by a hearing officer/attorney employed by the Department of Social Services purporting to order Respondent to pay child support and maintain health insurance. (LF 9-14). Thereafter pursuant to said purported **AJudgment** and Order@, on or about November 6, 2000 the Director of the Division of Child Support Enforcement (DCSE) issued an **AIncome Withholding Order@** directing Respondent's employer to pay to the Family Support Center from Respondent's income accruing child support of \$343 per month plus \$85.75 per month on alleged **Aarrearages@**. (LF 15-17)

Thereafter on November 13, 2000, Respondent filed a 2 Count Petition in the Circuit Court of Greene County. Count I sought judicial review of the administrative child support order based upon 14 grounds, including a complaint that Section 454.490 RSMo. was unconstitutional because the purported **AJudgment** and Order was not signed by a person selected for office in accordance with * * * Article V of the state constitution.@ Count II sought a temporary restraining order, a preliminary injunction and a permanent injunction against the Director and employees of DCSE because the income withholding order was an attempt to enforce an unconstitutional statute. (LF 5-17)

A TRO and Notice of Hearing for a preliminary injunction were issued by Circuit Judge Miles Sweeney on the same day the petition was filed, enjoining enforcement of DCSE's Income Withholding Order because the so-called **AJudgment** and Order appear to be entered pursuant to a facially and patently unconstitutional statute, to-wit: 454.490 RSMo.@ (LF-34). Thereafter on December 18, 2000 pursuant to the Stipulation of Respondent and DCSE (LF 40-41), a **AStay [of Enforcement] Order@** was

entered by Circuit Judge Don Burrell. (LF-42) In his subsequent Judgment, Judge Don Burrell interpreted said Stay Order to be ~~A~~an order staying enforcement of the judgment until the case could be decided on the merits.@ (LF 113)

On December 22, 2000 Respondent filed a Motion for Summary Judgment itemizing four undisputed material facts. (LF 43-44) No response pursuant to Rule 74.04(c)(2) was ever filed by DCSE or the Attorney General. Instead DCSE filed an ~~A~~Objection@ claiming that summary judgment was improper under Section 454.475 and under Chapter 536 RSMo. (LF 103-106) Later the Attorney General filed ~~A~~Suggestions@ arguing that Section 454.490 RSMo. was constitutional. (LF 107-110)

Thereafter on February 27, 2001 Circuit Judge Don Burrell filed an ~~A~~Order@ holding Section 454.490 unconstitutional and decreed the Judgment and Order of the DCSE hearing officer ~~A~~void *ab initio* and shall have no legal effect.@ (LF-3) Said Order was appealed and the appeal was subsequently dismissed by this Court at 62 S.W.3d 58 (Mo. banc 2001).

Thereafter on January 10, 2002, the Circuit Court entered a Judgment generally consistent with its prior Order. (LF 112-115). Said Judgment set aside DCSE's purported ~~A~~Judgment and Order@ because it was not signed by an Article V judge and vacated same as ~~A~~void *ab initio*@ Said Judgment also enjoined DCSE from enforcing its income withholding order. Thereafter on April 15, 2002 after receiving special permission, the Attorney General filed a Notice of Appeal. (LF 118, 124)

Statement of Facts. Respondent's Motion for Summary Judgment itemized in numbered paragraphs pursuant to Rule 74.04(c)(1) the following material facts:

1. A so-called ~~A~~Judgment and Order@ has been entered by the Department purportedly on October 26, 2000 purporting to order Respondent/Plaintiff to pay child

support and maintain health insurance. A copy of said Judgment and Order is attached to the Petition as [LF 9-14].

2. Pursuant to said purported AJudgment and Order@ on or about November 6, 2000 the Director of the Division of Child Support Enforcement issued an AIncome Withholding Order@, a copy of which is attached hereto and incorporated herein as [LF 15-17].

3. Said Income Withholding Order was directed to Plaintiff's employer (see [LF 15-17] and verified Application for Temporary Restraining Order) [LF 18-33].

4. The above-described AJudgment and Order@ was not signed by an Article V judge. (See said Judgment).

No timely response to said numbered paragraphs was ever filed by DCSE or the Attorney General. (LF)

POINT RELIED ON

THE TRIAL COURT DID NOT ERR IN DECLARING DCSE'S PURPORTED ADMINISTRATIVE AJUDGMENT AND ORDER@ HEREIN-BELOW VOID AND ' 454.490 RSMO. UNCONSTITUTIONAL BECAUSE THE SAID AJUDGMENT AND ORDER@ AND THE SAID ' 454.490 RSMO. VIOLATED ARTICLE V OF THE MISSOURI CONSTITUTION IN THAT SAID AJUDGMENT AND ORDER@ WAS NOT EXECUTED BY A PERSON SELECTED FOR OFFICE IN ACCORDANCE WITH AND AUTHORIZED TO EXERCISE JUDICIAL POWER UNDER SAID ARTICLE V AND IN THAT SAID ' 454.490 RSMO. AUTHORIZED THE USE OF POST-JUDGMENT ENFORCEMENT REMEDIES FOR A AJUDGMENT AND ORDER@ WHICH WAS NOT

**EXECUTED BY A PERSON SELECTED FOR OFFICE IN ACCORDANCE WITH AND
AUTHORIZED TO EXERCISE JUDICIAL POWER UNDER SAID ARTICLE V.**

Article V, section 1 of the Missouri State Constitution

Slay v. Slay, 965 S.W.2d 845 (Mo.banc 1998)

Chastain v. Chastain, 932 S.W.2d 396 (Mo.banc 1996)

Fowler v. Fowler, 984 S.W.2d 508 (Mo.banc 1999)

Transit Cas. Co. v. Certain Underwriters, 995 S.W.2d 32 (Mo.App. 1999)

Section 454.490 RSMo.

Section 454.475, RSMo. (Supp. 1999)

ARGUMENT

**THE TRIAL COURT DID NOT ERR IN DECLARING DCSE-S PURPORTED
ADMINISTRATIVE AJUDGMENT AND ORDER® HEREIN-BELOW VOID AND
' 454.490 RSMO. UNCONSTITUTIONAL BECAUSE THE SAID AJUDGMENT AND
ORDER® AND THE SAID ' 454.490 RSMO. VIOLATED ARTICLE V OF THE
MISSOURI CONSTITUTION IN THAT SAID AJUDGMENT AND ORDER® WAS NOT
EXECUTED BY A PERSON SELECTED FOR OFFICE IN ACCORDANCE WITH AND
AUTHORIZED TO EXERCISE JUDICIAL POWER UNDER SAID ARTICLE V AND IN
THAT SAID ' 454.490 RSMO. AUTHORIZED THE USE OF POST-JUDGMENT
ENFORCEMENT REMEDIES FOR A AJUDGMENT AND ORDER® WHICH WAS NOT
EXECUTED BY A PERSON SELECTED FOR OFFICE IN ACCORDANCE WITH AND
AUTHORIZED TO EXERCISE JUDICIAL POWER UNDER SAID ARTICLE V.**

Regarding the Judgment and Order. Article V, Section 1 of the state constitution vests the judicial power of this state in * * * courts * * * composed of judges. *Slay v. Slay*, 965 S.W.2d 845 (Mo.banc 1998). To constitute a judgment, a purported judgment must be signed by a person selected for office in accordance with and authorized to exercise judicial power by article V of the state constitution. *Slay, supra*. A purported judgment which is not signed by a judge is a nullity. *Slay, supra*, (Holstein, et al. concurring.), *Fowler v. Fowler*, 984 S.W.2d 508 (Mo.banc 1999). The foregoing rules are not limited to purported judgments entered by family court commissioners. See *e.g., Transit Cas. Co. v. Certain Underwriters*, 995 S.W.2d 32 (Mo.App. 1999) which voids a ruling by a court-appointed master. See also, *Chastain v. Chastain*, 932 S.W.2d 396 (Mo.banc 1996) which holds administrative child support modifications are unconstitutional when entered without explicit judicial approval.

In the instant case the purported Judgment and Order was not entered by a judge but instead was signed by a Hearing Officer who is a licensed Missouri attorney employed by the State of Missouri, Department of Social Services, Division of Legal Services, and properly designated by the Director of the Department of Social Services to conduct child support administrative hearings **and render written judgments**. Section 454.475, RSMo. (Supp. 1999). (See the Judgment and Order at LF 12-13, emphasis added) Under the foregoing authorities, said purported Judgment and Order is null and void and the trial court's holding below so declaring, must be affirmed.

Regarding ' 454.490. The authority that the constitution places exclusively in the judicial department has at least two components B judicial review and the power of courts to decide issues and **pronounce and enforce judgments**. *Chastain v. Chastain*, 932 S.W.2d 396 (Mo.banc 1996--emphasis added). Section 454.490 RSMo. provides that A[u]pon docketing, the

[administrative child support] order shall have all the force, effect and attributes of a docketed order or decree of the circuit court, including, but not limited to, lien effect and enforceability by supplementary proceedings, contempt of court, execution, and garnishment.@ Said statute in effect therefore, authorizes the entering of an enforceable child support judgment by an administrative hearings officer instead of an article V judge. Further, said statute awards DCSE the power to enforce said purported judgment, giving it a power granted by the constitution exclusively to the judicial branch. Said statute is therefore unconstitutional under *Slay, supra* and *Chastain, supra*. As a result, the decision of the trial court below so holding, must be affirmed.

CONCLUSION

For the foregoing reasons, the holding of the trial court should be affirmed.

Respectfully submitted,

Robert M. Sweere, Missouri Bar# 29643

Attorney for Respondent Sherry Staeden (Ladlee)

CERTIFICATE OF SERVICE

I hereby certify that 1 copy and 1 computer diskette of the foregoing were served by first-class mail, postage prepared, this ____ day of June, 2002 upon:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief includes the information required by Rule 55.03, complies with the limitations of Rule No. 84.06(b) and contains 1,541 words and that the diskettes provided this Court and counsel have been scanned for viruses and determined to be virus free.
